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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY LEE GROVER,

Defendant and Appellant.

F056757

(Super. Ct. No. BF124358A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Gary T. Friedman, Judge.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Hill, J. and Kane, J.

INTRODUCTION

Appellant Jerry Grover was convicted of felony evasion of a peace officer (Veh. Code, § 2800.2) and misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1)), based on an incident where he refused to pull over for a traffic stop and led officers on an eight minute high-speed chase. His defense theory was that he was unable to stop his car because he suffered a seizure while driving. On appeal, he contends the court abused its discretion when it permitted an officer, also trained as an emergency medical technician (EMT), to testify that it was not possible for a person to drive a car while suffering a seizure. We will affirm.

FACTS

Just before 2:00 a.m. on August 1, 2008, California Highway Patrol (CHP) Officers Lopez and Davila were on patrol in a marked vehicle on northbound Highway 99 in Kern County. They observed a silver Mazda sedan in front of them traveling at 85 miles per hour in a 65 mile-per-hour zone.

The officers activated the patrol car's lights to conduct a traffic stop for speeding, but the Mazda failed to stop. The officers activated the siren and the car accelerated to 100 miles per hour. The officers pursued the car as it sped down the highway, turned onto a curving offramp and drove through business and residential streets. The car ran numerous traffic signals and stop signs and traveled between 80 to 90 miles per hour on the surface streets.

The officers pursued the Mazda for eight minutes until it pulled into the driveway of a residence on McGregor Avenue and stopped in front of the garage. The Mazda's occupants remained inside the car as the garage door slowly opened.

Officers Lopez and Davila left their patrol car and ran to the open window on the driver's side door. Lopez drew his Taser and Davila drew his service weapon. They aimed their weapons at the driver, later identified as appellant, and ordered him to put the

car in park and show his hands. Appellant did not comply with their orders. Lopez could not see appellant's face or demeanor because appellant turned his head away from the driver's side window. Appellant kept his hands under the driver's seat and moved toward the passenger seat. A female passenger, later identified as Tara Gray, remained in the front seat and was screaming.

Officers Lopez and Davila repeatedly ordered appellant to raise his hands but he failed to comply. Officer Lopez discharged his Taser twice into appellant's arm. Appellant screamed and fell on top of Gray. Appellant never placed the vehicle in park, and the car rolled backwards and into the street. Gray continued screaming and tried to put the car in park.

CHP Officers Adams and Ferguson arrived at the scene and ran to the car's front passenger door, but the window was rolled up and the door was locked. Officer Adams broke the passenger-side window with his flashlight and unlocked the passenger door. Appellant was still on top of Gray and he was screaming. Adams ordered appellant out of the car. Appellant did not comply and yelled about the Taser. Adams grabbed appellant, pulled him over Gray and out of the passenger door, and Ferguson placed the car in neutral.

The officers placed appellant face-down on the ground and repeatedly ordered him to place his hands behind his back. Appellant did not say anything, but he kept his hands under his body and failed to comply with their orders. Officer Adams placed his Taser near appellant's right shoulder and again ordered appellant to put his hands behind his back. Appellant failed to comply and Adams discharged the Taser. Appellant screamed and his body convulsed.

Appellant finally placed his hands behind his back and he was handcuffed. Officer Davila picked up appellant from the ground and appellant walked to the patrol car on his own power. Appellant had a syringe in his rear pants pocket.

The officers searched the vehicle and found a garage door opener in the car, a plastic billy club under the driver's seat and appellant's checkbooks in the trunk. They also found a 12-gauge pump action sawed-off shotgun in the trunk. The shotgun was loaded with one shell, and it was in poor condition and missing parts.

The officers searched the unoccupied McGregor Avenue house. The outer doors were locked. The officers entered the garage and found a hole in the drywall that led into a bedroom. Within the drywall hole, the officers found two shotgun shells and a digital scale on top of a board stud. The shells appeared to match the shell removed from the shotgun found in the Mazda's trunk.

The officers went through the drywall hole and entered the bedroom, which contained men's clothing and a document in appellant's name on the bed. A glass smoking pipe with burnt residue was found in an air vent. The other rooms of the house contained numerous boxes of clothing, tools, personal items and a box addressed to appellant.

Defense Evidence

Appellant did not testify at trial. The only defense witness was Tara Gray, who was the passenger in the car when appellant was arrested, and was also the mother of appellant's child. Gray testified that she had seen appellant suffer three seizures since they started dating in 2007. The first incident occurred shortly after they started dating, when she saw appellant suffer a mild seizure.

Gray testified a few days before appellant's arrest in this case, she saw appellant suffer a second seizure. This second incident occurred when appellant was driving Gray and another female in an SUV near China Grade Loop in Kern County. Gray testified appellant started shaking and his head went backwards. Appellant immediately lost control of the SUV and the vehicle flipped over and was totaled. Gray suffered scratches and bruises, but she did not see any injuries on appellant. Gray left the area with a friend, but appellant stayed behind to report the accident and have the vehicle towed. Gray

testified appellant said he did not want to go to a doctor after the accident because he did not have insurance. Appellant rented the silver Mazda after he totaled the SUV.

Gray testified about the events that occurred on the evening before appellant was arrested in this case. Around 11:00 p.m., Gray borrowed the Mazda from appellant's mother's house. Appellant was sleeping at the house, so Gray did not ask his permission to borrow the car. Gray drove around and ran into her friend, "Shane," who needed help to move his things. Gray drove Shane to a house where Shane retrieved boxes and put them in the Mazda. Shane also placed a sawed-off shotgun in the trunk, and a black stick and shotgun shells inside the car.

Gray next drove Shane to the house on McGregor Avenue, where the car chase ended later that night. Gray knew the house belonged to some friends, and appellant and Gray occasionally stayed at that house. Gray and Shane went in the house and no one was there. Gray picked up the shotgun shells from the car and threw them on a bench in the garage. Gray then drove Shane to his girlfriend's house, which was located across the street from appellant's mother's house. As Gray drove around with Shane, she kept receiving cell phone calls from appellant, but she ignored the calls and did not answer.

As Gray drove to Shane's girlfriend's house, she thought they were being followed by the police. When Gray arrived at the girlfriend's house, appellant and Shane's girlfriend emerged from their respective houses and yelled at Shane and Gray for being together. Appellant was very upset that Gray took the rental car without his permission, and said he was going to drive Gray to her home. Shane started to remove his things from the car but the sheriff's department arrived at the girlfriend's house and arrested Shane.

Gray testified she got into the Mazda with appellant. Appellant drove to a gas station, filled up the car, and then drove onto the highway and headed for Gray's house. Gray testified that as appellant drove on the highway, he started having seizures that were more extreme than the two previous incidents. Gray saw the flashing lights from the

police car and told appellant to stop, but he was shaking, his eyes rolled back, his head tilted back, he was not coherent and he did not appear to hear her. Gray testified appellant continued to act that way during the entire police pursuit: “Like he’d come in and out, but like when he’d come out of it he wasn’t like—you know what I mean, like in his own state of mind.”

Appellant did not say anything to Gray while he was driving and having the seizures. Appellant’s hands fell off the steering wheel several times and the car swerved. When Gray tried to grab the steering wheel, appellant would snap out of it and regain control of the wheel. She helped turn the steering wheel toward the highway offramp, but appellant held onto the bottom of the wheel and his foot was on the gas pedal. As they continued on surface streets, appellant still acted like he was “somewhere else ‘cause he wouldn’t look at me or nothing, and I was telling him that there was cops behind us.”

Gray testified the officers followed appellant until he pulled into the driveway of the McGregor Avenue residence. Appellant’s face was not normal because he was still suffering seizures.¹ Gray thought appellant started to come out of the seizures when he braked, turned into the driveway and stopped in front of the garage. Gray admitted she activated the garage door opener, but she did not know why she did that. The officers immediately hit appellant with the Taser. Appellant screamed, fell on top of Gray, flailed around and tried to remove the probes.

On cross-examination, Gray testified that she spoke to officers the night that appellant was arrested, and conceded she did not tell them that appellant suffered seizures, even though she knew appellant was being arrested. She did not mention the seizures because everything happened too fast and she was in shock after appellant was hit with the Taser. Gray did not recall telling an officer that she was having a

¹ Officer Davila testified he did not notice anything unusual about appellant’s face when he escorted appellant into the patrol car.

conversation with appellant in the car when they noticed the patrol car's red lights, that appellant was driving dangerously, or that she did not know why appellant would not stop. She might have told an officer that she saw appellant run more than five stop signs and red lights.

Gray admitted that prior to her trial testimony, she never informed law enforcement officers that appellant suffered a seizure that night, or that Shane placed a shotgun in the trunk of the Mazda. She later told the defense investigator about the shotgun and seizures, and appellant said he was going to tell someone about the seizures. Gray did not tell the police about the shotgun because she thought they would not believe her.

Gray insisted she saw appellant suffer three seizures—the incident shortly after they started dating, the incident that caused the SUV accident, and the incident that led to appellant's arrest in this case. Gray admitted she did not have any medical training, she did not know how long seizures lasted and she never conducted any type of research about seizures. Gray knew that people who suffer seizures go into convulsions, “drool and they—something about their mouths and eyes,” but this information was based on her observations of appellant's behavior rather than any independent knowledge.

Rebuttal

The prosecution recalled Officer Lopez, who testified appellant's car was traveling about 100 miles per hour as it turned onto the highway's offramp. Lopez observed the activation of the vehicle's brake lights as the car slowly turned on the offramp's sharp half-circle curve, and then resumed high speeds on surface streets.

Lopez testified he interviewed Gray about the high-speed chase while she was sitting in a patrol car at the McGregor Avenue residence, just after appellant was taken into custody. Gray told Lopez that appellant picked her up two hours earlier, they drove around and talked about their child, and she noticed the patrol car's red lights as they were talking. Gray said she repeatedly told appellant to stop, but he refused and she did

not know where he was driving. Gray said appellant drove recklessly and dangerously, he drove through red lights and stop signs and she wanted him to stop. Gray never told Lopez that appellant suffered a seizure while he was driving.

CHP Officer Steven Martin testified about appellant's prior accident. At 2:40 a.m. on July 28, 2008, Martin responded to Round Mountain Road and China Grade Loop, and determined appellant had been the driver of a vehicle that went off the road at the curve and crashed into a chainlink fence. Martin also determined the vehicle was traveling too fast, it did not slow down enough to negotiate the curve, it drifted off the road and overturned into the fence. Martin examined the vehicle and did not find any mechanical defects in the steering or brake systems.

Officer Martin testified he talked with appellant for about a half hour as they waited for a tow truck. Appellant was calm, collected and appeared normal. Appellant had no problems communicating with Martin, and he was articulate and responded coherently to Martin's questions. Appellant did not have any visible injuries, he did not display any symptoms of having suffered a seizure and Martin did not feel it was necessary for appellant to receive any medical attention.

On cross-examination, Martin conceded he did not know how much time elapsed between the Round Mountain Road accident and when he was dispatched to the scene. Martin testified that a person's reactions and physical exhaustion after a seizure depended on the severity of the seizure. On redirect examination, the trial court permitted Martin to testify as an expert based upon his training as an EMT, and Martin testified that it was not physically possible for a person to drive while suffering a seizure because the person would lose voluntary control of all the muscles in the body.

Appellant was charged with five felony counts based on evasion of a peace officer, possession of a firearm by an ex-felon, possession of the billy club and sawed-off shotgun, and two misdemeanor counts for resisting arrest and possession of narcotics paraphernalia. Appellant stipulated to his ex-felon status for purposes of his jury trial.

Appellant was convicted of count 1, felony evading a peace officer, and count 6, misdemeanor resisting a peace officer. He was found not guilty of count 7, misdemeanor possession of narcotics paraphernalia, and the jury was unable to reach verdicts on the other four felony counts as to possession of a firearm, possession of a sawed-off shotgun, and possession of the billy club. The court found true four prior prison term enhancements and granted the prosecution's motion to dismiss the remaining felony counts in furtherance of justice. Appellant was sentenced to the upper term of three years for count 1, plus four years for the prior prison term enhancements and a concurrent six-month term for count 6.

DISCUSSION

ADMISSIBILITY OF OFFICER MARTIN'S TESTIMONY

On appeal, appellant contends his felony conviction for evading a peace officer must be reversed because the trial court abused its discretion when it allowed Officer Martin to testify as an expert that a person could not drive a vehicle while suffering a seizure. Appellant asserts Martin's training as an EMT was insufficient to establish any special knowledge to testify about seizures, and his testimony was prejudicial because it completely undermined the defense theory that appellant's erratic driving was the result of suffering a seizure and he did not intend to evade officers.

A. Background

As set forth *ante*, Gray testified for the defense that she had seen appellant suffer three seizures, including the incident where he flipped the SUV and the incident that led to his arrest in this case. At the conclusion of Gray's testimony, the jury was excused and the prosecutor stated she had never heard anything about appellant's prior accident or alleged seizures, and she requested a continuance to further investigate these matters. Defense counsel was also surprised by some aspects of Gray's testimony and joined in the continuance request so she could obtain appellant's medical records. The court found good cause and granted the continuance.

When the jury trial subsequently resumed, the prosecutor called Officer Martin as a rebuttal witness to testify about appellant's prior accident and his observations of appellant's behavior. Officer Martin testified before the jury that he had been with the CHP for 12 years and he was also trained as an EMT. Prior to joining the CHP, he was a reserve firefighter and EMT in Bakersfield, a full-time firefighter and EMT in Hanford, and received EMT training for both positions. He received additional EMT training when he joined the CHP.

Martin testified he received training about seizures in his EMT courses and explained a seizure is an involuntary reaction in the body that causes a person to lose all voluntary muscle control. A person's body seizes and tenses up, the person is unable to move or breathe, and the person's body and jaw clenches up. Martin testified that after a person suffers a seizure, the person would be physically exhausted, hot and disoriented, and might need immediate medical attention. Martin testified appellant did not display any symptoms of having suffered a seizure after the Round Mountain Road accident.

On redirect examination, the prosecutor asked Martin whether a person would be able to drive a vehicle while suffering a seizure. Martin said it was absolutely not possible because the person would lose all voluntary muscle control. Defense counsel objected for the lack of a foundation, and the court invited counsel to conduct voir dire on the issue.

On voir dire before the jury, Martin testified he was not a physician and did not have any special medical education. He had 40 hours of training required to be an EMT, and had taken two EMT courses and received certifications from the Bakersfield Fire Department and the CHP academy. Martin was not sure how many hours of his EMT courses were devoted to seizures. He knew there were different symptoms for different types of seizures, and that a grand mal seizure was one of the most severe seizures, when a person loses total control of the body. A person suffering a seizure will "physically lie on the ground in a shaking motion again, curling up, losing all voluntary control of their

muscles.” The court asked Martin whether a grand mal was the opposite of a petit mal seizure and Martin could not specifically remember.

Defense counsel conducted further voir dire and asked Martin whether a person’s reaction to a seizure would be affected by physical impairment, mental defect or disability. Martin agreed that someone who already lacked control of their limbs would react differently during a seizure than someone with normal body control. Martin also agreed that a person’s reaction to a seizure would be different if the person was already taking medication to control the seizures.

At the conclusion of the voir dire, the court found Martin qualified to testify “in his subspecialty as an EMT.” The prosecutor again asked Martin whether a person would be able to drive a vehicle while having a seizure. Defense counsel objected because the question addressed the ultimate fact, and the court overruled the objection. Martin testified it was not physically possible for a person to drive while having a seizure because the person would lose voluntary muscle control during the seizure. Martin said a person who suffered a seizure would usually be lying down and violently shaking, and the person might not lose consciousness depending on the severity of the seizure.

B. Analysis

“‘A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates.’ (Evid. Code, § 720, subd. (a).) An expert witness’s testimony in the form of an opinion is limited to a subject ‘that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact’ (Evid. Code, § 801, subd. (a).) A claim that expert opinion evidence improperly has been admitted is reviewed on appeal for abuse of discretion. [Citation.]” (*People v. Catlin* (2001) 26 Cal.4th 81, 131.)

“The qualification of expert witnesses, including foundational requirements, rests in the sound discretion of the trial court. [Citations.] That discretion is necessarily

broad: ‘The competency of an expert “is in every case a relative one, i.e. relative to the topic about which the person is asked to make his statement.” [Citation.]’ [Citation.] Absent a manifest abuse, the court’s determination will not be disturbed on appeal. [Citations.]” (*People v. Ramos* (1997) 15 Cal.4th 1133, 1175.) “““Where a witness has disclosed sufficient knowledge of the subject to entitle his opinion to go to the jury, the question of the degree of his knowledge goes more to the weight of the evidence than its admissibility.”” [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 322.)

Appellant contends the court abused its discretion when it permitted Officer Martin to testify as an expert because his “minimal” EMT training was insufficient to constitute the special knowledge to render an expert opinion as to whether a person suffering a seizure could still drive a vehicle, he lacked any knowledge of seizures beyond that of an average lay person and he did not have any medical training about seizures.

A person’s lack of training as a physician, however, does not disqualify that person from testifying as an expert on various medical issues. “Qualifications other than a license to practice medicine may serve to qualify a witness to give a medical opinion. (*People v. Villarreal* (1985) 173 Cal.App.3d 1136, 1142 ... [‘Because of the dramatic growth of diverse interdisciplinary studies in recent times, often individuals of different nonphysician professions are called upon to give medical opinions or at least opinions involving some medical expertise’]; see *People v. Fierro* (1991) 1 Cal.4th 173, 224 ...; *Brown v. Colm* (1974) 11 Cal.3d 639, 645 ... [referring to an ‘unmistakable general trend in recent years ... toward liberalizing the rules relating to the testimonial qualifications of medical experts’].)” (*People v. Catlin, supra*, 26 Cal.4th at pp. 131-132.) It is well-recognized that “[t]he services that EMT’s provide to patients are ‘inextricably identified’ with the health of patients,” and EMT’s have been found to be within the broad definition of “health care providers” within various statutory frameworks. (*Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, 403.)

The trial court herein did not abuse its discretion when it permitted Martin to testify as an expert about seizures. Martin did not simply testify that he knew about seizures, but offered detailed explanations as to the nature and circumstances of his EMT training, how a seizure affects a person's body and why a person would not be able to drive while suffering a seizure. He further testified that he did not observe appellant display any symptoms or behavior that indicated he had suffered a seizure when he encountered appellant shortly after the accident on Round Mountain Road, and explained that appellant acted normal and spoke coherently. The jury was well aware that Martin was not a physician but heard about his training as an EMT, and the question of the degree of Martin's knowledge went more to the weight than the admissibility of his testimony. In addition, the jury herein was properly instructed on the evaluation of the testimony of an expert witness.

Appellant contends Martin lacked any medical training to offer an expert opinion about seizures. The same argument could be made as to the very basis for his defense theory, which was solely based upon the lay testimony of his girlfriend. Gray testified appellant suffered seizures prior to the SUV accident and during the high-speed chase. Gray admitted she lacked any medical information about seizures, and only knew about seizures based upon what she observed from appellant's behavior. The defense failed to introduce any medical evidence to support Gray's testimony that appellant suffered from seizures, even though the court granted a continuance for both the prosecutor and defense counsel to conduct further investigation in light of Gray's trial testimony.

Appellant contends Martin's testimony was prejudicial because it undermined his defense evidence that his erratic driving and the high-speed chase was the result of suffering a seizure rather than his intent to evade officers. While Martin testified that a person suffering a seizure could not drive a vehicle, the prosecutor did not rely on such evidence in closing argument. Instead, the prosecutor attacked the credibility of Gray's description of appellant's alleged seizure, which purportedly made him incoherent while

he led the officers on an eight minute high-speed chase, during which the officers observed the silver Mazda slow down and brake on the curving highway offramp, and brake and stop when he arrived at the residential garage. The prosecutor's only reference to Officer Martin occurred when she asserted that Gray's testimony about appellant's previous seizure when he flipped the SUV was not credible because "we had another officer that came in and showed that that wasn't true also." Martin's testimony was properly admitted.

DISPOSITION

The judgment is affirmed.